

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SER:GEO:ATL:TL-N-3685-00
CLRountree

date: August 3, 2000

to: District Director, Georgia District
Attention: Floyd Braswell
Analysis Section 430
Room 850, Stop 601-D

from: District Counsel, Georgia District, Atlanta

subject: Advice on Timeliness of Refund Claim
for Excessive Deficiency Interest

Taxpayer: [REDACTED]

E.I.N.: [REDACTED]

Taxable Year Ended December 31, [REDACTED]

DISCLOSURE STATEMENT

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This is in response to the memorandum dated June 14, 2000 requesting advice as to whether [REDACTED] ([REDACTED]) submitted a timely claim for refund of excessive underpayment interest on their [REDACTED] deficiency.

[REDACTED] filed a timely refund claim on [REDACTED]

through the letter dated [REDACTED] from [REDACTED] (REDACTED). Because the Internal Revenue Service (Service) has never formally disallowed [REDACTED]'s claim, [REDACTED]'s [REDACTED] letter continues to be a timely-filed claim for refund of [REDACTED] underpayment interest upon which the Service may act. Even without [REDACTED]'s [REDACTED] letter, the claim is an adequate claim for refund of underpayment interest under Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978). In addition, based on the Service's failure to formally disallow [REDACTED]'s claim, the claim could be modified after the two-year limitations period under I.R.C. §6511 would have otherwise expired. Furthermore, the period for [REDACTED]'s filing of a refund suit will not expire before at least [REDACTED].

Therefore, under the guidelines of Revenue Procedure 99-40, we recommend that the Service determine whether it assessed excessive [REDACTED] deficiency interest. If the Service determines that it assessed excessive interest, the Service should abate such interest and issue a refund with appropriate overpayment interest as soon as possible.

Please note that this memorandum does not address the correctness of [REDACTED]'s computation of refundable interest. If you need assistance on that matter, we will provide assistance after request.

Issues

Whether [REDACTED] filed a timely claim for refund of excessive interest under I.R.C. §6601(a) for [REDACTED].

A. Whether a letter dated [REDACTED] constituted a valid informal claim.

B. If [REDACTED] filed a valid informal claim, whether such claim was filed within the limitation period for the filing of a refund claim.

U.I.L.: 6511.00-00; 6511.01-03; 6511.02-00; 6511.09-00;
6513.00-00

Facts

[REDACTED] filed a consolidated U. S. Corporation Income Tax Return (Form 1120) for calendar year [REDACTED]. [REDACTED]'s [REDACTED] Form

1120 was due and filed as follows:

<u>Due Date under</u> <u>I.R.C. §6072</u>	<u>Extended Due Date</u> <u>Under I.R.C. §6081</u>	<u>Date</u> <u>Filed</u>
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[REDACTED]

[REDACTED]

[REDACTED]

Such Form 1120 reflected an overpayment of \$ [REDACTED] and [REDACTED]'s election under I.R.C. §6513(d) that \$ [REDACTED] of the overpayment be credited to [REDACTED]'s [REDACTED] estimated tax. However, the Service's records reflected that [REDACTED]'s payments and credits applied to its [REDACTED] Form 1120 liability exceeded the reported liability by \$ [REDACTED]. Based on such excess, [REDACTED]'s election under I.R.C. §6513(d), and [REDACTED] Form 2220 designating that the [REDACTED] credit-elect amount be credited to the installment of [REDACTED]'s [REDACTED] estimated tax due on March 15, [REDACTED], the Service credited \$ [REDACTED] to the designated estimated tax installment.

On [REDACTED], the Service refunded the remaining \$ [REDACTED] of the [REDACTED] overpayment to [REDACTED].

No overpayment interest was paid on any portion of the [REDACTED] overpayment. First, no overpayment interest is allowable on the portion credited to [REDACTED] estimated taxes. I.R.C. §6513(d); Treas. Regs. §301.6402-3(a)(5), §301.6402-3(a)(6), §301.6513-1(d) and §301.6611-1(h)(-1(h)(2)(vii); Martin Marietta Corp. v. United States, 572 F.2d 839, 841 - 842 (Ct. Cl. 1978); Avon Products, Inc. v. United States, 588 F.2d 342, 345 (2d Cir. 1978). Second, no interest is allowable when a refund is issued within 45 days of the filing of a return. I.R.C. §6611(e)(1).

Assessment and Payment of [REDACTED] Tax Deficiency and Interest

On [REDACTED], the Service assessed the following items with respect to [REDACTED]'s [REDACTED] Form 1120:

<u>Tax Deficiency</u>	<u>Underpayment Interest</u>
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\$ [REDACTED]

\$ [REDACTED]

[REDACTED] satisfied the [REDACTED] deficiency and interest through two items. The first was an "advance payment" of the deficiency of \$ [REDACTED] on [REDACTED]. The second was the Service's transfer of \$ [REDACTED] of an overpayment credit from [REDACTED]'s [REDACTED] Form 1120 liability by the week beginning [REDACTED]. Such overpayment credit was generated as the result of an abatement on [REDACTED] of the [REDACTED] tax originally assessed against [REDACTED].

Correspondence Related to [REDACTED]'s Deficiency Interest

On Thursday, [REDACTED], the Service received a letter dated [REDACTED] from the law firm of [REDACTED]. Such letter alleged that the Service had charged excessive underpayment interest of \$[REDACTED] on [REDACTED]'s [REDACTED] deficiency. Based on such interest and allowable GATT overpayment interest under I.R.C. §6611 and §6621(a)(1), [REDACTED]'s letter estimated that [REDACTED] was entitled to a refund totaling \$[REDACTED]. [REDACTED] determined that overpayment interest of \$[REDACTED] accrued from [REDACTED] through [REDACTED]. Therefore, if the Service concurred, the letter requested that the Service issue a refund to [REDACTED].

Specifically [REDACTED]'s letter stated the following:

Taxpayer filed Form 1120 for [REDACTED] on or about [REDACTED], requesting an overpayment of \$[REDACTED] to be credited to the following year. The remaining overpayment of \$[REDACTED] was refunded without allowable interest on [REDACTED]. Subsequently, additional tax of \$[REDACTED] was assessed on [REDACTED]. The Service charged interest from [REDACTED] and [REDACTED] on \$[REDACTED] and \$[REDACTED] of this assessment, respectively. Interest should have been calculated beginning [REDACTED] (the due date for the third installment for [REDACTED]) on \$[REDACTED] of the assessment. This is because \$[REDACTED] of the credit elect was not needed until that time (see Attached Allocation of [REDACTED] Credit Elect). In accordance with the Avon Products decision, interest should not be charged on a deficiency when there is a corresponding overpayment in the account.

The attached "Allocation of [REDACTED] Credit Elect" (credit-elect analysis) reflected the following required installments and payments of estimated tax:

	Due Dates of Installments			
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Required				
Amount \$	[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Less:				
Deposit	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Amount				
Due/* \$	[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]
(Surplus)				[REDACTED]

In addition, the credit-elect analysis applied the [REDACTED]

credit-elect amount as follows:

<u>Due Date of Installment</u>	<u>Amount</u>	<u>Deficiency/(Surplus)</u>
[REDACTED]	\$ [REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
Total	\$ [REDACTED]	

In support of the claimed excessive interest, attached interest computations reflected that underpayment interest properly accrued on the [REDACTED] deficiency as follows:

<u>Amount of Deficiency Subject to Interest</u>	<u>Period Over Which Interest Accrued</u>	<u>Amount of Interest</u>
\$ [REDACTED] *	[REDACTED] - [REDACTED]	\$ [REDACTED]
[REDACTED] **	[REDACTED] - [REDACTED]	[REDACTED]
	[REDACTED] - [REDACTED]	[REDACTED]
Total Interest		\$ [REDACTED]

* Deficiency less refund on [REDACTED]

** Unpaid deficiency on [REDACTED]

Contrary to I.R.C. §6611(e), [REDACTED]'s letter incorrectly asserted that interest was allowable on the refund of \$[REDACTED].

The documents provided to this office do not reflect the actual date or method of mailing of [REDACTED]'s letter dated [REDACTED].

On [REDACTED], Jan Barnett (Ms. Barnett), the restricted interest examiner assigned to [REDACTED]'s deficiencies and overpayments, orally advised [REDACTED] that there would be no refund of [REDACTED] deficiency interest. The denial of any refund was based on [REDACTED]'s application of the credit-elect amount to the estimated tax installment due [REDACTED]. At that time, the Service commenced accrual of underpayment interest on a subsequently determined deficiency that is less than the credit-elect amount from the due date of the estimated installment to which the taxpayer specifically applied a credit-elect amount. Rev. Rul. 84-58, 1984-1 C.B. 254; Rev. Rul. 88-98, 1988-2 C.B. 356, 357.

In denying the request, the Service did not consider whether

the [REDACTED] letter failed to comply with the requirements of a valid refund claim.

By letter dated [REDACTED], [REDACTED] supplemented its letter dated [REDACTED] and requested that the Service reconsider allowing [REDACTED]'s claim for abatement and refund of excessive [REDACTED] underpayment interest.

In support of the requested reconsideration, such letter specifically stated

.... Pursuant to Rev. Rul. 99-40, in computing deficiency interest, a credit elect should be applied only as needed to satisfy estimated payment liabilities for the subsequent year. This is without regard to any election to apply a credit elect to a specific estimated payment.

Miscellaneous Facts

[REDACTED] has not filed any Forms 843 or 1040X related to the [REDACTED] deficiency interest.

[REDACTED] executed 16 Forms 872 under I.R.C. §6501(c)(4) that extended the original three-year limitation period for [REDACTED] until [REDACTED]. Consequently, [REDACTED]'s Forms 872 extended the time for filing a [REDACTED] refund claim until [REDACTED] (six months after the extended assessment period). I.R.C. §6511(c)(1). However, because [REDACTED] did not submit any document that could be a refund claim by [REDACTED], the extended period under I.R.C. §6511(c) does not apply. I.R.C. §6501(c)(3).

Because the "advance payment" of \$ [REDACTED] on [REDACTED] [REDACTED] was applied to the [REDACTED] deficiency, the only relevant payment is the overpayment credit of \$ [REDACTED] transferred from [REDACTED]'s [REDACTED] Form 1120 liability as the result of the abatement on [REDACTED].

To start the two-year period for filing a refund suit, the Service is required to send a notice of disallowance of a refund claim by certified mail. I.R.C. §6532(a)(1). [REDACTED] has not waived its right to receive a notice of disallowance of its refund claim or extended such two-year period. I.R.C. §6532(a)(2) and §6532(a)(3). The Service has not issued any formal notice of disallowance to [REDACTED] under I.R.C. §6532(a)(1).

Discussion

Issue A - [REDACTED] Letter was Valid Informal Refund Claim

Treasury Regulation §301.6402-2(b)(1) provides the following for refund claims:

.... The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof.... A claim that does not comply with this paragraph will not be considered for any purposes as a claim for refund or credit.

The courts have long recognized the validity of informal claims that do not comply with all formal requirements set forth in Treasury Regulations (informal claim doctrine). United States v. Kales, 314 U.S. 186 (1941); Bonwit Teller & Co. v. United States, 283 U.S. 258 (1931). The Supreme Court has stated the informal claim doctrine as follows:

... a notice fairly advising the Commissioner of the nature of the taxpayer's claim, which the Commissioner could reject because too general or because it does not comply with formal requirements of the statute and regulations, will nevertheless be treated as a claim where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period.... This is especially the case where such a claim has not misled the Commissioner and he has accepted and treated it as such.

Kales, 314 U.S. at 194.

A valid informal claim must possess both of the following two elements:

- a. A written component that adequately notifies the Service that the taxpayer believes that it has been subjected to an erroneous or illegal tax and requests a refund of the tax for a particular year for a specified reason indicating the erroneous or illegal collection.
- b. The document focuses attention on the merits of a dispute with sufficient information as to the tax and year to enable the Service to commence, if it wishes, an examination into the claim.

Mills v. United States, 890 F.2d 1133, 1135 (11th Cir. 1989);
Miller v. United States, 949 F.2d 708, 711 (4th Cir. 1991);
Gustin v. Commissioner, 876 F.2d 485, 488 (5th Cir. 1989); Estate

of Hale v. Commissioner, 876 F.2d 1258, 1262 (6th Cir. 1989); Martin v. United States, 833 F.2d 655, 660 (7th Cir. 1987); Arch Eng'g Co. v. United States, 783 F.2d 190, 192 (Fed. Cir. 1986); Am. Radiator & Standard Sanitary Corp. v. United States, 318 F.2d 915, 920 (Ct. Cl. 1963); Barenfeld v. United States, 442 F.2d 371, 374 - 375 (Ct. Cl. 1971).

A document is a viable refund claim when the document's plain language reflects, directly or indirectly, (a) an overpayment of tax and (b) the taxpayer's resulting claim, demand, request for, or belief as to entitlement to, or expectancy of, or intent to seek any refund or credit of taxes. Clement v. United States, 472 F.2d 776, 779 (1st Cir. 1973), cert. denied, 414 U.S. 864 (1973); BCS Fin. Corp. v. United States, 930 F. Supp. 1273, 1278 (N.D. Ill. 1996), aff'd, 118 F.3d 522, 523 - 527 (7th Cir. 1997); Colgate-Palmolive-Peet Co. v. United States, 58 F.2d 499, 501 - 502 (Ct. Cl. 1932); Cumberland Portland Cement Co. v. United States, 104 F. Supp. 1010, 1012 - 1015 (Ct. Cl. 1952); Import Wholesalers Corp. v. United States, 368 F.2d 577, 579 - 580 (Ct. Cl. 1966); Dresser Indus., Inc. v. United States, 84 AFTR2d 99-5173 (N.D. Tex. 1999).

The courts examine all surrounding facts and circumstances of each case to determine whether a viable written component provided the required notice to the Service. Kales, 314 U.S. at 194 - 197; Furst v. United States, 678 F.2d 147, 151 (Ct. Cl. 1982); Gustin, 876 F.2d at 488 - 489; Estate of Hale, 876 F.2d at 1262 - 1264; Am. Radiator & Standard Sanitary Corp., 318 F.2d at 920 - 921 & n. 8.

Issue A - Application of Law to Facts

██████ filed a valid informal refund claim for ██████ deficiency interest. ██████'s letter dated ██████ and enclosures constituted the written component of the refund claim. Their language clearly notified the Service that ██████ believed that it has been subjected to excessive ██████ deficiency interest of \$██████ and requested a refund of such interest under the decision in Avon Products, Inc.

In addition, the letter's plain language was sufficient to focus the Service's attention on the merits of the dispute over ██████ deficiency interest and provide information to enable the Service to commence an examination into the claim. Such language disclosed sufficient details apprising Service of the amount of the disputed interest and the underlying issue that allowed a determination of the validity of ██████'s claim. Burrell v. Fahs, 232 F.2d 163, 165 (5th Cir. 1956); Jones v. United States, 5 F. Supp. 146, 148, 150 (Ct. Cl. 1933), cert. denied sub nom.

United States v. Jones, 293 U.S. 566 (1934).

The sufficiency of [REDACTED]'s [REDACTED] letter also is corroborated by the Service's conduct in response to the letter. Kales, 314 U.S. at 191 - 192, 194, 196 - 197; Bonwit Teller & Co., 283 U.S. at 261 - 262, 264; Neilson v. Harrison, 131 F.2d 205, 209 (7th Cir. 1942); Import Wholesalers Corp., 368 F.2d at 579 - 580. Ms. Barnett was able to orally deny the request in [REDACTED]'s [REDACTED] letter based on the [REDACTED]'s treatment of the credit-elect amount and the Service's position set forth in Revenue Rulings 84-58 and 88-98. In addition, at that time, the Service did not consider whether the [REDACTED] letter was a timely filed, valid refund claim.

Issue B - Time for Filing Refund Claim

A taxpayer generally must file a claim for refund of income tax by the later of (a) three years of the time that the return filed or (b) two years after payment of the related income tax. I.R.C. §6511(a). When a claim is filed within two years of payment and more than three years after the return is filed, the amount of an allowed refund cannot exceed the amount of payments made during two years immediately preceding the filing of claim. I.R.C. §6511(b)(2).

The date of payment with respect to transfers of overpayment credits is the date of the actual transfer from another liability. Braithwaite v. United States, 873 F. Supp. 452 (D. Col. 1994); Donahue v. United States, 95-2 U.S.T.C. ¶50,390 (Fed. Cl. 1995); Urwyler v. United States, 77 AFTR2d 96-294 (E.D. Cal. 1996); Fitzmaurice v. United States, 84 AFTR2d 99-7052 (S.D. Tex. 1999).

Refund claims for underpayment interest are subject to the same limitations periods as the underlying tax. I.R.C. §6601(f)(1); Alexander Proudfoot Co. v. United States, 454 F.2d 1379, 1382 - 1385 (Ct. Cl. 1972).

Issue B - Application of Law to Facts

The limitation period under I.R.C. §6511 for the filing of a refund claim related to [REDACTED]'s [REDACTED] deficiency interest did not expire before [REDACTED]. Such date was two years after the date that the Service abated tax for [REDACTED] and transferred \$[REDACTED] of the resulting [REDACTED] overpayment to the [REDACTED] liability. The Service received [REDACTED]'s informal refund claim on [REDACTED]. Consequently, [REDACTED] filed a timely refund claim for the excessive [REDACTED] deficiency interest.

██████'s letter dated ██████ merely supplemented the ██████ letter. The reference to provisions of Revenue Procedure 99-40 for application of credit-elect amounts did not add any new ground that was outside the scope of the "use of money" principle enunciated in Avon Products, Inc. The facts on which the ██████ letter was based would necessarily have been ascertained by the Service in determining the merits of the original informal claim filed ██████. In essence, ██████'s ██████ letter is merely a reminder of the Service's obligation to respond to the claim filed ██████.

Because the Service has never formally disallowed ██████'s refund claim, ██████'s ██████ letter, even though received after the refund limitation period expired, was a valid amendment of ██████'s informal claim filed ██████. Bemis Bros. Bag Co. v. United States, 289 U.S. 28, 33 - 35 (1933); United States v. Memphis Cotton Oil Co., 288 U.S. 62, 71 (1933); St. Joseph Lead Co. v. United States, 299 F.2d 348, 350 - 351 (2d Cir. 1962); United States v. Ideal Basic Indus., Inc., 404 F.2d 122, 124 (10th Cir. 1968), cert denied, 395 U.S. 936 (1969).

Because ██████ has not waived its right to receive a notice of disallowance of its refund claim and the Service has never issued such a notice, the limitation period for ██████'s filing of a refund suit may never expire. Rev. Rul 56-381, 1956-2 C.B. 2 C.B. 953; Detroit Trust Co. v. United States, 130 F. Supp. 815, 818 (Ct. Cl. 1955). Alternatively, even if the Service does not deny the claim as required I.R.C. §6532(a)(1), the six-year period under 28 U.S.C. §2401 and §2501 for filing general monetary claims against the government might impose an outside limit of six years on the period for filing a refund suit. I.R.C. §6532(a)(1). Finkelstein v. United States, 943 F. Supp. 425, 432 (D.N.J. 1996).

Under either theory, ██████ has until at least ██████ to file a refund suit if the Service fails to issue a notice of disallowance.

Conclusion and Recommended Action

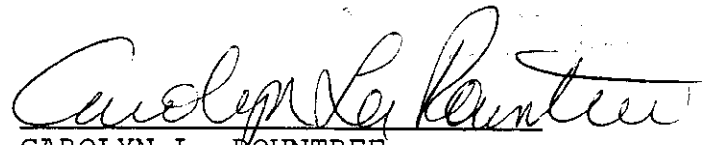
██████ filed a timely refund claim through ██████'s letter dated ██████. Even without ██████'s ██████ letter, ██████'s claim is an adequate claim for refund of ██████ underpayment interest. In addition, ██████'s claim could be modified after the limitations period would have otherwise expired because the Service had never formally disallowed the claim. Based on the Service's failure to formally disallow ██████'s claim, such claim continues to be a claim for refund of underpayment interest upon which the Service may act.

Therefore, under the guidelines of Revenue Procedure 99-40, we recommend that the Service determine whether it assessed excessive [REDACTED] deficiency interest. If the Service determines that it assessed excessive interest, the Service should abate such interest and issue a refund with appropriate overpayment interest as soon as possible.

To assist such recommended determination, attached is a copy of [REDACTED]'s [REDACTED] Form 2220.

Because no further action is required by this office at this time, we are closing our file.

If you have any questions, Please contact me at 404/338-7943.


CAROLYN L. ROUNTREE
Special Litigation Assistant

✓ Attachment:
[REDACTED] Form 2220

✓ cc: TL Cats

✓ cc: Mr. Roy Allison
Assistant Regional Counsel (TL)
Room 2110, Stop 180-R

✓ cc: Mr. William E. Cooper
Manager, Examination Group 1361
Koger Center, Stop 652-D
(w/attachment)